Calendar No. 922

99TH CONGRESS
2d Session

SENATE

REPORT
99-449

PERMITTING SKI AREAS ON NATIONAL FOREST SYSTEM LANDS

SEPTEMBER 18 (legislative day, SEPTEMBER 15), 1986.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 2266]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2266), to establish a ski area permit system on national forest lands established from the public domain, and for other purposes, having considered the same, reports favorably thereon with an amendment to the text and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Forest Ski Area Permit Act of 1986".

SEC. 2. PURPOSES.

The purposes of this Act are to—

(a) provide a unified and modern permitting process for nordic and alpine ski areas on national forest lands;

(b) provide for ski area permits which more closely reflect the acreage and other physical requirements of modern ski area development; and

(c) provide a permit system which will be more commensurate with the long-term construction, financing, and operation needs of ski areas on national forest lands.

SEC. 3. SKI AREA PERMITS.

(a) LAW APPLICABLE TO PERMITS.—The provisions of the Act of March 4, 1915 (16 U.S.C. 497) notwithstanding, the term and acreage of permits for the operation of nordic and alpine ski areas and facilities on National Forest System lands shall henceforth be governed by this Act and other applicable law.

(b) AUTHORITY.—The Secretary of Agriculture (hereinafter referred to as "the Secretary") is authorized to issue permits (hereinafter referred to as "ski area permits") for the use and occupancy of suitable lands within the National Forest System for nordic and alpine skiing operations and purposes. A ski area permit—

(1) may be issued for a term not to exceed 40 years;

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(2) shall ordinarily be issued for a term of 40 years (unless the Secretary determines that the facilities or operations are of a scale or nature as are not likely to require long-term financing or operation), or that there are public policy reasons specific to a particular permit for a shorter term;

(3) shall encompass such acreage as the Secretary determines sufficient and appropriate to accommodate the permittee's needs for ski operations and appropriate ancillary facilities;

(4) may be renewed at the discretion of the Secretary;

(5) may be cancelled by the Secretary in whole or in part for any violation of the permit terms or conditions, for nonpayment of permit fees, or upon the determination by the Secretary in his planning for the uses of the national forests that the permitted area is needed for higher public purposes;

(6) may be modified from time to time by the Secretary to accommodate changes in plans or operations in accordance with the provisions of applicable law;

(7) shall be subject to such reasonable terms and conditions as the Secretary deems appropriate; and

(8) shall be subject to a permit fee based on fair market value in accordance with applicable law.

(c) RULES AND REGULATIONS.—Within one year after the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this Act, and shall, to the extent practicable and with the consent of existing permit holders, convert all existing ski area permits or leases on National Forest System lands into ski area permits which conform to the provisions of this Act within 3 years of the date of enactment of this Act.

(d) Nothing in this Act shall be deemed to amend, modify or otherwise affect the Secretary's duties under the National Environmental Policy Act, or the Forest and Rangelands Renewable Resources Planning Act as amended by the National Forest Management Act, including his duties to involve the public in his decisionmaking and planning for the national forests.

2. Amend the title so as to read: "A bill to establish a ski area permit system on national forest lands, and for other purposes.".

PURPOSE OF THE MEASURE

S. 2226, as reported, would establish new authority for issuance of all commercial alpine and nordic skiing area facility special-use permits on National Forest System lands.

BACKGROUND AND NEED

There are two primary Acts which authorize the Secretary of Agriculture to issue permits and regulate occupancy and use for ski areas or operations on National Forest System lands—the Act of June 4, 1897 (30 Stat. 11, as amended), and the Act of March 4, 1915 (38 Stat. 1086, as amended). Under the 1915 Act, occupancy permits can be issued for a maximum of a 30-year term and for a maximum of 80 acres for facilities and structures. In order to accommodate ski area developments, one occupancy permit under the 1915 authority is issued to cover high investment installations such as lodges, lift installations, restaurants, and hotels. These are usually issued with 20-year terms, but some have been issued with 30-year terms. A second permit, an annual permit, is issued to cover the remaining areas of the appurtenant ski area development on National Forest System lands such as for ski slopes and parking lots which are areas involving less investment. This second permit is issued under the organic authority provided by the Act of June 4, 1897, to administer the National Forests. Essentially, a permittee has a dual permit to cover the overall skiing operation.

S. 2266 extends the present authority governing the term of the permit from a maximum of 30 years to a maximum of 40 years. A shorter permit term may be used if the Secretary of Agriculture determines that the facilities or operations are of a scale or nature as are not likely to require long-term financing or operations. The bill allows ski area permits to encompass such acreage as the Secretary determines sufficient and appropriate to accommodate the permittee's needs for ski operations and ancillary facilities.

S. 2266 also provides authority to the Secretary to issue a single permit for ski slopes, parking lots, and other lands and buildings covering an acreage that the Secretary determines sufficient and appropriate to accommodate the permittee's overall ski operation and facilities.

LEGISLATIVE HISTORY

S. 2266 was introduced by Senator Wallop on March 27, 1986. The Subcommittee on Public Lands, Reserved Water and Resource Conservation held a hearing on the bill on June 20, 1986. The Administration recommends enactment of S. 2266 if amended.

At a business meeting on August 14, 1986, the Senate Committee on Energy and Natural Resources ordered S. 2266, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on August 14, 1986, by unanimous vote of a quorum present recommends that the Senate pass S. 2266, if amended, as described herein.

The rollcall vote on reporting the measure was 18 yeas, 0 nays as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield*	
Mr. Weicker*	
Mr. Domenici	
Mr. Wallop*	
Mr. Warner	
Mr. Murkowski*	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Metzenbaum*	
Mr. Melcher*	
Mr. Bradley	
Mr. Bingaman	
Mr. Rockefeller	

* Indicates voted by proxy.

COMMITTEE AMENDMENTS

During the consideration of S. 2266, the Committee adopted an amendment in the nature of a substitue. This amendment, like S. 2266 as introduced, is intended to replace the dual permitting system now used for ski areas on national forest lands with a system providing a single, long-term permit covering all lands needed for operation of a ski area.

As introduced, S. 2266 provided for a 55 year maximum term for ski area permits. The Administration testified in favor of retaining the current 30 year maximum. The Committee amendment provides for a 40-year maximum term.

Section 3(b)(2) of the Committee amendment provides that ski area permits "shall ordinarily be issued for a term of 40 years (unless the Secretary determines that the facilities or operations are of a scale or nature as are not likely to require long-term financing or operation, or that there are public policy reasons specific to a particular permit for a shorter term)."

The intent of this language is to ensure that the Secretary must provide a clear rationale for any decisions to issue a ski area permit for less than 40 years. The Committee amendment provides that the Secretary may issue shorter permits for either of two reasons. The first is that the longer term would not aid the financing of the facilities and operations under permit. The second would be that there is some public policy reason specific to a particular permit area justifying the shorter term. The Committee adopted language requiring "public policy reasons specific to a particular permit" to stress that it did not intend to give the Secretary the discretion to decide, as a general policy, that ski areas should not receive 40 year permits.

While this bill requires the Secretary to justify each instance in which he issues a permit for less than 40 years, the Committee wishes to point out that its language leaves the determination of adequate justification for shorter permits in the hands of the Secretary. By specifying that permits would "ordinarily" be issued for 40 year terms the Committee does not intend to require that every permit, or even that the preponderance of permits, be for the 40 year maximum. Nor does the Committee intend to limit the Secretary's flexibility to meet the needs of specific situations by such means as the issuance of short-term preconstruction permits for new areas.

As reported by the Committee S. 2266 gives the Secretary discretion to determine the appropriate acreage which would be covered by each permit and does not set any upper limit on the size of a permit area. Some concern has been expressed that the bill's authority to grant permits of a size "sufficient and appropriate to accommodate the permittee's needs for ski operations and appropriate ancillary facilities" will somehow lead to a change in Forest Service policy on the construction of housing and other potential "ancillary facilities" on National Forest lands. The present Forest Service manual authorizes "provision of (public) lodging accommodations on National Forest land only where there is a public need for the facilities and where there is no suitable private land for

such facilities within a reasonable distance." The Committee feels the present manual policy is appropriate and should be continued.

The Committee further notes that the phrase "appropriate ancillary facilities" is intended to include only those facilities directly necessary for the operation and support of a winter sports facility. Developments such as golf courses or water slides which are not integrally part of skiing operations should not be issued permits under the authority of this bill, which is intended to apply to ski areas. Even where appropriate, facilities not directly related to the operation of a ski area should be authorized through a separate permit, under the authority of the 1915 Act.

Section 3(b) of the bill authorizes the Secretary to issue ski permits subject to permit fees based on fair market value in accordance with existing law. It is the understanding of the Committee that the Forest Service currently is directed by the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701) and by OBM Circular A-25, to receive fair market value, with some limited exceptions, for ski area permits. It is also the Committee's understanding that this direction is incorporated in Forest Service regulations (36 CFR 251.57). The Committee does not intend section 3(b) in any way to override or interfere with those directives or exceptions.

Section 3(c) of the bill requires the Secretary to convert existing dual-permits for ski areas to the single, long-term permits authorized by this bill, within 3 years. It is the intent of the Committee that, should a permittee wish to retain its existing dual-permit for any reason, that it be allowed to continue under the existing term permit and renewable annual permits until such time as the existing term permit expires.

In reporting S. 2266, the Committee emphasizes that nothing in this bill is intended to change the environmental and other standards that an existing or potential permittee must meet to obtain a ski area permit for a new ski area; to expand a permit area; to construct new facilities (lifts, trails, buildings, etc.) in the permit area; or to build out a masterplan, insofar as environmental protection and mitigation requirements are concerned.

Specifically, nothing in this bill is intended to modify or bypass in any way the requirements of the National Environmental Policy Act, the Forest and Rangeland Renewable Resources Planning Act (as amended), the Endangered Species Act or other applicable law with respect to planning for and development of ski areas, the preparation of necessary environmental impact statements or analyses, and requirements for public involvement in planning and decisionmaking and consultation and coordination with State and local government agencies and officials (including State game and fish authorities). And, of course, the issuance of permits for alpine and nordic ski areas, and the operation of such areas, shall continue to be done in accordance with principles of multiple use and with the planning and other requirements of the Multiple Use Sustained Yield Act of 1960, the Forest and Rangeland Renewable Resources Planning Act of 1974 (as amended), and other applicable law.

The Committee believes that careful planning and consideration of environmental impacts are essential for the successful integra-

tion of ski development with the other multiple-uses and values of the national forests.

The Committee urges the Forest Service to work to see that the impacts of ski development on the national forests, and related development on adjacent state and private lands, are fully considered and responsibly dealt with, and urges the Forest Service to work closely with local and State authorities, including local planning authorities and State Fish and Game Departments, to see that an integrated approach is taken to minimize impacts of public resources—state and local as well as Federal.

The second of the Committee's two amendments would amend the title of the bill.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 15, 1986.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources,
Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2266, the National Forest Ski Area Permit Act of 1986, as ordered reported by the Senate Committee on Energy and Natural Resources, August 14, 1986.

S. 2266 would authorize the Secretary of Agriculture to issue permits for the use and occupancy of lands within the National Forest System for nordic and alpine skiing operations, for a term not to exceed 40 years. The bill directs the Secretary to promulgate rules and regulations to implement the new permitting procedure within one year after the date of enactment. Subject to the consent of existing permit owners, the Secretary would convert existing ski area permits or leases on National Forest lands into ski area permits that conform to the provisions of this bill within three years after the date of enactment. The bill authorizes the Secretary to access permit fees as he deems appropriate.

Based on information from the Forest Service, CBO estimates the implementation of S. 2266 would result in no significant cost to the Federal Government. Enactment of the bill would enable the Forest Service to cease issuing annual ski area permits, yielding a slight annual savings once permit conversion is completed.

Enactment of S. 2266 would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2266. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2266, as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of Agriculture setting forth executive agency recommendations relating to S. 2266 is set forth below:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, May 30, 1986.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, here is our report on S. 2266, a bill "To establish a ski area permit system on national forest lands established from the public domain, and for other purposes."

The Department of Agriculture recommends that S. 2266 be enacted only if amended. We support the single-permit system proposed by the legislation but oppose the 55-year term for such permits. We recommend that application be extended to all National Forest System lands.

S. 2266, cited as the "National Forest Ski Area Permit Act of 1986," would establish new authority for issuance of all commercial alpine and nordic skiing area and facility special-use permits on National Forest System lands established from the public domain. It would extend our present authority governing the term of a permit from a maximum of 30 years to ordinarily 55 years "unless the Secretary determines that the facilities or operations are of a scale or nature as are likely to require long-term financing or operations." The proposal would encompass such acreage as the Secretary determines sufficient and appropriate to accommodate the permittee's needs for ski operations and ancillary facilities. Currently, there is an 80-acre maximum acreage for term occupancy permits which authorize major recreation developments such as ski areas on the National Forests.

There are two primary acts which authorize the Secretary of Agriculture to issue permits and regulate occupancy and use for ski areas or operations on National Forest System lands—the Act of June 4, 1897 (30 Stat. 11, as amended), and the Act of March 4, 1915 (38 Stat. 1086, as amended). Under the 1915 Act, occupancy permits can be issued for a maximum of a 30-year term and for a maximum of 80 acres for facilities and structures. In order to ac-

commodate ski area development, one occupancy permit under the 1915 authority is issued to cover high investment installations such as lodges, lift installations, restaurants, and hotels. These are usually issued with 20-year terms, but some have been issued with 30-year terms. A second permit, an annual permit, is issued to cover the remaining areas of the appurtenant ski area development on National Forest System lands such as for ski slopes and parking lots which are areas involving less investment. This second permit is issued under the organic authority provided by the Act of June 4, 1897, to administer the National Forests. Essentially, a permittee has a dual permit to cover the overall skiing operation.

Outdoor recreation is a major activity on National Forest System lands. We cooperate with the private sector to provide needed recreation facilities and service. Since 1935, the Forest Service and private industry have been cooperating to provide opportunities for skiing to recreationists. Currently, there are 170 ski areas on the National Forests. In the Western United States, the majority of ski areas are totally or partially on National Forest System lands. In addition, many of the major areas in the East are also on the National Forests. These areas involve over $1 billion of privately invested capital that annually returns approximately $9 million in fees to the Treasury. Often the image of winter sports developments in this country is one of multimillion dollar destination resorts. However, of our 170 alpine ski resorts, less than one in five have investments exceeding $10 million. Nearly half have investments exceeding $1 million, and there are some with investments lower than $100,000. Many permits for nordic ski activities authorize activities with only minimal investments. There is a wide range of investment in skiing facilities and improvements currently under permit within the National Forests.

We support the provision in S. 2266 that provides authority to the Secretary to issue a single permit for ski slopes, parking lots, and other lands and buildings covering an acreage that the Secretary determines sufficient and appropriate to accommodate the permittee's overall ski operation and facilities. This one-permit system would be an efficient way of doing business for both the Government and the permittee.

We have concerns with the 55-year term. A viable and actively expanding skiing industry operating on National Forest System lands has developed under the current dual-permit system. Within the past year in Colorado, $125 million of private capital was invested at existing ski areas which included 19 new lift installations. We have a continuing and active interest in new areas. We presently have 13 applications for new ski area developments under current permitting procedures and policy. We recognize that the dual-permit system is cumbersome, but we have no evidence that the 30-year tenure has been or can be expected to be a deterrent to ski area development. The longer tenure provided by the bill would hinder the flexibility in management that the agency must retain in order to accommodate the changing needs and demands of the using public.

Our primary concern is the need to provide discretion to the Secretary to issue permits for the term the Secretary determines is appropriate for each individual situation because of the varying

nature of the size and investment of skiing operations on National Forest System lands. We believe that language directing the Secretary to issue a permit "ordinarily" for any specific tenure is not necessary or desirable. We recommend that subsection 3(b)(1) be changed to authorize the Secretary to issue permits for the term deemed necessary, but not to exceed 30 years.

We also recommend that the Secretary be given the discretion to define the term "ski area" in connection with promulgation of regulations. We believe such discretion is necessary because S. 2266 could be interpreted to require that any skiing activity authorized under permit be issued under the new authority. This could include occupancy permits for resorts on National Forest System lands that are primarily for summer activities but incidentally provide some winter skiing activities. We believe that these types of permits should continue to be issued under existing occupancy permit authorities and that to do so, discretionary authority to the Secretary is necessary in S. 2266.

We recommend that reference to the Act of June 4, 1897 (30 Stat. 34), in subsection 3(a) be deleted. We believe that the basic authorizations of the act should still apply to all National Forest System lands including ski areas. Deleting the reference in this section will not change accomplishment of the intent of S. 2266.

We also recommend that any reference to "commercial" in describing ski areas or activities be deleted because it will cause confusion as to the application of the proposed bill. Some of our ski area permittees are not-for-profit organizations or governmental bodies and do not consider themselves commercial organizations.

We recommend that the requirement that all permits be converted under this authority within 2 years be changed. Instead, we believe that the magnitude of the job and legal implications require some flexibility. It would be our intent to convert permits to the new system within 3 years if the existing permit is in good standing and if the permittee agrees to the conversion prior to the termination date of the existing permit. There is a potential issue of a taking if the bill is enacted and we are required to convert all existing permits within a specific timeframe. Also where major changes are planned in the near future at some ski areas, it would make sense to wait to convert the permits under the new authorization until any approved changes could be included. This would eliminate having to reissue the permit twice.

Converting existing permits to new permits under this new authority would be an administrative action on an existing operation in most cases, and we would not anticipate that additional procedural requirements involving economic, social, and environmental assessments would be required. These, of course, would be done if there is a proposed change of facilities or expansion.

Currently, the use of the land as a ski operation is shown in the Forest Plan. The term of the permit would not change how the area is considered in the regular planning cycle except that the commitment of the site and the use would be for a longer period of time.

Finally, we recommend that the permit system apply to all National Forest System lands, not only those established from the public domain. We have ski area permits on acquired land in the

East as well as those in the West established from the public domain.

We have a long successful working relationship with the skiing industry. Together we have been successful in providing the public with skiing opportunities across the Nation. The success, safety, and response to environmental concerns are due to the cooperation and the close working relationships between the Forest Service and the skiing industry. We acknowledge that the industry may be experiencing financing problems associated with our cumbersome dual permit system and that a change to a single permit is warranted. We can support enactment of S. 2266 if amended. Enclosed are recommended changes to S. 2266.

We estimate that implementation of this bill, if amended as we suggest, would cost approximately $45,000 over the first 4 years to develop rules and regulations and convert permits. Once conversion was completed, there would be a slight annual savings due to no longer issuing annual permits.

The Office of Management and Budget advises that there is no objection to presentation of this report from the standpoint of the Administration's program.

Sincerely,

DANIEL G. AMSTUTZ,
Acting Secretary.

Enclosure.

USDA—SUPPLEMENTARY STATEMENT, RECOMMENDED AMENDMENTS TO S. 2266

1. On page 1, line 7, delete the words "consolidate existing laws" and substitute the words "provide additional authority".

2. Delete the words "established from the public domain" on page 1, line 8 and page 2, line 1, on page 2, lines 8 and 9, line 15, lines 22 and 23, and on page 3, line 17.

3. On page 2, lines 11 and 12, change the word "Acts" to "Act" and delete the words "June 4, 1897 (30 Stat. 34) and".

4. On page 2, line 16, add the following new sentence at the end after the words "applicable law": "To the extent feasible, and with the consent of the permittee, the Secretary shall, within 3 years of the date of enactment of this Act, convert all existing ski area permits which are in good standing at the time of reissuance into ski area permits which conform to the provisions of this Act."

5. On page 2, line 23, delete the word "commerical".

6. On page 2, line 24, delete the word "shall".

7. On page 2, lines 24 through 26, and on page 3, lines 1 and 2, delete the entire subsection (1) and insert the following: "(1) shall be issued for such term as the Secretary deems appropriate, but not to exceed a period of 30 years."

8. On page 3, line 7, insert a comma after the word "conditions", delete the word "or" the second time it appears. On line 8, delete the period and insert the words "or if the Secretary determines the permitted area is needed for higher public purposes."

9. On page 3, lines 14 through 19, delete all after the word "shall" and insert the following: "define the term ski area as it is to be applied pursuant to this Act."

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of the rule XXVI of the standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 2266, as reported.

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Calendar No. 936

99TH CONGRESS
2d Session

SENATE

REPORT
99-452

PERMITTING ACCESS ACROSS CERTAIN FEDERAL LANDS IN THE STATE OF ARKANSAS

SEPTEMBER 19 (legislative day, SEPTEMBER 15), 1986.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 767]

The Committee on Energy and Natural Resources to which was referred the bill (S. 767), to direct the Secretary of the Interior to permit access across certain Federal lands in the State of Arkansas, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

S. 767 would direct the Secretary of the Interior to permit access across the Buffalo National River to certain privately owned lands outside the area.

BACKGROUND AND NEED

S. 767 would resolve a dispute about a roadway that runs 450 feet across a portion of the Buffalo National River, Arkansas. In 1981, Mr. Eddie Jones purchased a home on lands located in the park. He was issued a special use permit to move the house and drive across park lands to reach the house which was relocated to private lands adjoining the park. Mr. Jones was issued extensions of the permit to allow time for the construction of a road on private lands to provide access to the home which did not cross park lands. The National Park Service denied permanent access to Mr. Jones and litigation followed. The United States District Court upheld the National Park Service decision in 1984.

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This legislation would direct the Park Service to permit access to the Jones property across the park subject to such regulations as the Secretary determines necessary so as not to unnecessarily diminish the scenic, historic, or other values for which the unit was established. This access would be for the private, noncommercial use of Mr. Jones and his family and is not intended to be a general public access road through the national river.

LEGISLATIVE HISTORY

Senator Bumpers introduced S. 767 on March 28, 1985. The Subcommittee on Public Lands, Reserved Water and Resource Conservation held a hearing on S. 767 on July 31, 1986.

At a business meeting on September 11, 1986, the Senate Committee on Energy and Natural Resources ordered S. 767 favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on September 11, 1986, by a majority vote of a quorum present recommends that the Senate pass S. 767 as described herein.

The rollcall vote on reporting the measure was 17 yeas, 1 nay as follows:

YEAS	NAYS
Mr. McClure	Mr. Metzenbaum*
Mr. Hatfield	
Mr. Weicker*	
Mr. Domenici	
Mr. Wallop	
Mr. Warner	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	
Mr. Johnston*	
Mr. Bumpers	
Mr. Ford	
Mr. Melcher*	
Mr. Bradley*	
Mr. Bingaman*	
Mr. Rockefeller*	

*Indicates voted by proxy.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 12, 1986.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 767, a bill to direct the Secretary of the Interior to permit access across certain federal lands in the State of Arkansas, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources, September 11, 1986.

S. 767 would allow one private landowner an exclusive right of access across the Buffalo National River Park. We estimate that enactment of the bill will result in no significant additional costs to the federal government and will not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER,
Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 767. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilites on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 767, as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth executive agency recommendations relating to S. 767 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 767, a bill "To direct the Secretary of the Interior to permit access across certain Federal lands in the State of Arkansas, and for other purposes."

We strongly oppose this bill. S. 767 would require the National Park Service to provide to a private individual what the courts

have determined that individual is not entitled to, namely, private vehicular access across park land to his residence.

In 1982, Mr. Eddie Jones was given a temporary permit to use National Park Service land in Buffalo National River for the purpose of moving a house he had purchased within the national river to private land outside the boundary. Mr. Jones asked for a permanent right of access across park land but was refused. His request was denied because the National Park Service does not have the authority to grant permanent vehicular access across park land for private purposes. Furthermore, the land is partially wooded and partially old pasture land that is now returning to its natural condition as a forest. Even if the authority were available, the use proposed by Mr. Jones would not be consistent with maintaining or fostering the natural conditions of the riverway.

In 1983, Mr. Jones sued the Department of the Interior for the right to permanent vehicular access across National Park Service land to the house he had moved to private land outside the boundary. On March 7, 1984, the United States District Court for the western district of Arkansas dismissed the action, with the Court finding that Mr. Jones had no right to use part of the park lands for access to his residence. The judgment was affirmed on appeal.

Mr. Jones is not deprived of access to his house. He built a road outside the national river boundary to his house and has been using it since March 1984. The effect of S. 767 would be to grant Mr. Jones the permanent access right that the National Park Service and the United States Court have denied him. Since the bill does not provide for any payment from Mr. Jones, the access would be granted free of charge. Furthermore, the map referred to in S. 767 does not exist. Yet the bill would require that access across park land be provided to private property shown on the map. We are assuming that only Mr. Jones' residence is the focus of the bill.

We believe that private access across park land is an extraordinary benefit for Congress to grant to one individual. Since the courts have found no legal right to such access, the only basis for granting such a benefit must be a powerful equitable argument in favor of this one individual. But facts as found by the United States District Court indicate that no such equities exist here. The Court stated, in part:

The evidence shows that Mr. Jones, "with his eyes wide open", bought the residence that he now occupies at a public sale held by the government and then moved it to where it is now located, across public lands, after obtaining a limited authorization to do so, and after promising that he would within a prescribed time, provide other access to his home. In short, he was misled by no one and he invited his present predicament . . . the evidence indicates that he has other access to the property across lands once owned by his father, and now owned by other members of his family. In fact, the easement signed by his father and introduced in evidence as Government Exhibit 9, presumably gives him access to the property.

The matter has been litigated in court and Mr. Jones has alternative access to his residence. We see no benefit to the public by giving Mr. Jones another access across park land and thereby encouraging other property owners and developers up and down the

river to request private access roads for themselves. We therefore strongly recommend against the enactment of S. 767.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

WILLIAM P. HORN,
Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill, S. 767, as reported.

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